



DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 121022566-2566-01]

RIN 0605-AA31

Civil Monetary Penalties; Adjustment for Inflation

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to adjust each civil monetary penalty provided by law within the jurisdiction of the Department of Commerce (the Department). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required the head of each agency to adjust its civil monetary penalties (CMP) for inflation no later than October 23, 1996, and requires agencies to make adjustments at least once every four years thereafter. These inflation adjustments will apply only to violations that occur after the effective date of this rule.

DATES: This rule is effective [insert date of publication in the Federal Register].

ADDRESSES: Office of General Counsel, Department of Commerce, 1401 Constitution Avenue, NW, MS 5876, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Peter Robbins; (202) 482-0846

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101—410) provided for the regular evaluation of CMPs to ensure

that they continue to maintain their deterrent value and that penalty amounts due to the Federal Government are properly accounted for and collected. On April 26, 1996, the Federal Civil Penalties Inflation Adjustment Act of 1990 was amended by the Debt Collection Improvement Act of 1996 (Public Law 104—134) to require each agency to issue regulations to adjust its CMPs for inflation at least every four years. The amendment further provided that any resulting increases in a CMP due to the inflation adjustment should apply only to the violations that occur subsequent to the date of the publication in the **Federal Register** of the increased amount of the CMP. The first inflation adjustment of any penalty shall not exceed ten percent of such penalty.

On October 24, 1996, November 1, 2000, December 14, 2004, and December 11, 2008, the Department published in the **Federal Register** a schedule of CMPs adjusted for inflation as required by law. By this publication, CMPs are again being adjusted for inflation as prescribed by law.

A civil monetary penalty is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,
2. Is assessed or enforced by an agency pursuant to Federal law; and,
3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

This regulation adjusts the CMPs that are established by law and assessed or enforced by the Department.

The actual penalty assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of internal guidelines that are used when assessing penalties for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the penalties recommended therein. The penalty ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate penalty to assess for a particular violation. The Penalty Policy is maintained and made available to the public on the NOAA Office of the General Counsel, Enforcement Section website at:

http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf.

The inflation adjustments were determined pursuant to the methodology prescribed by Public Law 101—410, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term "cost-of-living adjustment" was defined in Public Law 104—134 to mean the percentage for each CMP by which the Consumer Price Index (CPI) for June of the calendar year preceding the

adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. For the purpose of computing the inflation adjustments, the CPI for June of the calendar year preceding the adjustment means the CPI for June of 2011.

Public Law 101—410 requires each rounded increase to be added to the minimum or maximum penalty amount being adjusted, and the total is the amount of such penalty, as adjusted, subject to the ten percent limitation provided by Public Law 104—134 for the first adjustment.

Rulemaking Requirements

It has been determined that this rule is not significant for purposes of Executive Order 12866.

The Department for good cause finds that notice and opportunity for comment is unnecessary for this rulemaking pursuant to 5 U.S.C. 553(b)(B). It is unnecessary to ask for notice and comment because Public Law 104—134 requires the head of each agency to adjust its civil monetary penalties no later than October 23, 1996, and at least every four years thereafter, and Public Law 101—410, as amended by Public Law 104—134, states how to calculate the inflation adjustments, making such adjustments wholly non-discretionary. This rule merely adjusts the Department's CMP according to the statutory requirements. For the same reasons, there exists good cause to waive the thirty day delay in effectiveness of the rule, pursuant to 5 U.S.C. 553(d)(3).

Because notice and opportunity for comment are not required by 5 U.S.C. 553, or any other law, a Regulatory Flexibility Analysis is not required and none was prepared. This rule

does not contain information collection requirements for purposes of the Paperwork Reduction Act.

List of Subjects 15 CFR Part 6

Law enforcement, Penalties.

Lisa Casias,

Deputy Chief Financial Officer and Director for Financial Management.

Dated: November 16, 2012_

For the reasons set forth in the preamble, subtitle A of Title 15 of the Code of Federal Regulations is amended as follows:

PART 6—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

1. The authority citation for part 6 continues to read as follows:

Authority: Sec. 4, as amended, and sec. 5, Pub. L. 101—410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104—134, 110 Stat. 1321, 28 U.S.C. 2461 note.

2. Section 6.4 is revised as follows:

§ 6.4 Adjustments to penalties.

The civil monetary penalties provided by law within the jurisdiction of the respective agencies or bureaus of the Department, as set forth below in this section, are hereby adjusted in accordance with the inflation adjustment procedures prescribed in Section 5, Pub. L. 101—410, from the amounts of such penalties in effect prior to [insert date of publication in the Federal Register], to the amounts of such penalties, as thus adjusted, except for the penalties that are being adjusted for the first time, stated in paragraphs, (a)(1), which became effective on October 21, 1986; (a)(2), which became effective on March 2, 1863; (b)(5), which became effective on December 18, 2006; and (f)(1) and (f)(2), which became effective on December 18, 2010.

(a) Department of Commerce. (1) 31 U.S.C. 3802(a)(1)(D), Program Fraud Civil Remedies Act of 1986, from \$5,000 to \$5,500.

(2) 31 U.S.C. 3729(a)(1)(G), False Claims Act; minimum from \$5,000 to \$5,500; maximum from \$10,000 to \$11,000.

(b) Bureau of Industry and Security. (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act—Violation, from \$32,500 to \$32,500.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act—Inspection Violation, from \$25,000 to \$25,000.

(3) 22 U.S.C. 6761(a)(1)(B), Chemical Weapons Convention Implementation Act—Record Keeping Violation, from \$5,000 to \$5,000.

(4) 50 U.S.C. 1705(a), International Emergency Economic Powers Act (2007)—Violation, from \$250,000 to \$250,000.

(5) 22 USC 8142(a), United States Additional Protocol Implementation Act (2006)—Violation, from \$25,000 to \$27,500.

(c) Bureau of the Census. (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics—Delinquency on Delayed Filing of Export Documentation; maximum penalty for each day's delinquency, from \$1,000 to \$1,000; maximum per violation, from \$10,000 to \$10,000.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics—Violations, from \$10,000 to \$10,000.

(d) Economics and Statistics Administration. 22 U.S.C. 3105(a), International Investment and Trade in Services Act—Failure to Furnish Information; minimum, from \$2,500 to \$2,500; maximum, from \$32,500 to \$32,500.

(e) International Trade Administration. (1) 19 U.S.C. 81s, Foreign Trade Zone—Violation, from \$1,100 to \$1,100.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada FTA Protective Order—Violation, from \$130,000 to \$130,000.

(f) National Oceanic and Atmospheric Administration. (1) 51 U.S.C. 60123(a)(3), Land Remote Sensing Policy Act of 2010; new penalty \$10,000.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 2010, new penalty \$10,000.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), from \$200,000 to \$200,000.

(4) 16 U.S.C. 783, Sponge Act (1914), from \$650 to \$650.

(5) 16 U.S.C. 957, Tuna Conventions Act of 1950 (1962);

(i) Violation/Subsection (a), from \$32,500 to \$32,500.

(ii) Subsequent Violation/Subsection (a), from \$70,000 to \$70,000.

(iii) Violation/Subsection (b), from \$1,100 to \$1,100.

(iv) Subsequent Violation/Subsection (b), from \$6,500 to \$6,500.

(v) Violation/Subsection (c), from \$140,000 to \$140,000.

(6) 16 U.S.C. 971e(e), Atlantic Tunas Convention Act of 1975 (1995), from \$140,000 to \$140,000.

(7) 16 U.S.C. 972f(b), Eastern Pacific Tuna Licensing Act of 1984;

(i) Violation/Subsections (a)(1)-(3), from \$32,500 to \$32,500.

(ii) Subsequent Violation/Subsections (a)(1)-(3), from \$65,000 to \$65,000.

(iii) Violation/Subsections (a)(4)-(5), from \$6,500 to \$6,500.

(iv) Subsequent Violation/Subsections (a)(4)-(5), from \$6,500 to \$6,500.

(v) Violation/Subsection (a)(6), from \$140,000 to \$140,000.

(8) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988, from \$350,000 to \$350,000.

(9) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983, from \$11,000 to \$11,000.

(10) 16 U.S.C. 1375(a) (1), Marine Mammal Protection Act of 1972 (1981), from \$11,000 to \$11,000.

(11) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act (1990), from \$130,000 to \$130,000.

(12) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), from \$140,000 to \$140,000.

(13) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973;

(i) Knowing Violation of Section 1538 (1988), from \$32,500 to \$32,500.

(ii) Other Knowing Violation (1988), from \$13,200 to \$13,200.

(iii) Otherwise Violation (1978), from \$650 to \$650.

(14) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), from \$140,000 to \$140,000.

(15) 16 U.S.C. 2437(a)(1), Antarctic Marine Living Resources Convention Act of 1984;

(i) Violation, from \$6,500 to \$6,500.

(ii) Knowing Violation, from \$11,000 to \$11,000.

(16) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990;

(i) Violation, from \$6,500 to \$6,500.

(ii) Knowing Violation, from \$11,000 to \$11,000.

(17) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981;

(i) Sale and Purchase Violation, from \$11,000 to \$11,000.

(ii) Marking Violation, from \$275 to \$275.

(iii) False Labeling Violation, from \$11,000 to \$11,000.

(iv) Other than Marking Violation, from \$11,000 to \$11,000.

(18) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982 (1990), from \$140,000 to \$140,000.

(19) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985 (1990), from \$140,000 to \$140,000.

(20) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986; minimum from \$500 to \$500; maximum from \$6,500 to \$6,500.

(21) 16 U.S.C. 5010(a)(1), North Pacific Anadromous Stocks Act of 1992, from \$130,000 to \$130,000.

(22) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act (1993), from \$140,000 to \$140,000.

(23) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act (1990), from \$140,000 to \$140,000.

(24) 16 U.S.C. 5507(a)(1), High Seas Fishing Compliance Act of 1995, from \$130,000 to \$130,000.

(25) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995, from \$140,000 to \$140,000.

(26) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention

Implementation Act (2007), from \$140,000 to \$140,000.

(27) 16 U.S.C. 7009(c), Pacific Whiting Act of 2006 (2007); from \$140,000 to \$140,000.

(28) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971);

(i) Violation, from \$11,000 to \$11,000.

(ii) Subsequent Violation, from \$32,500 to \$32,500.

(29) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), from \$32,500 to \$32,500.

(30) 42 U.S.C. 9152(c)(1), Ocean Thermal Energy Conversion Act of 1980, from \$32,500 to \$32,500.

3. Section 6.5 is revised to read as follows:

§ 6.5 Effective Date of Adjustments.

The adjustments made by § 6.4 of this part, of the penalties there specified, are effective on [insert date of publication in the Federal Register], and said penalties, as thus adjusted by the adjustments made by § 6.4 of this part, shall apply only to violations occurring after [insert date of publication in the Federal Register], and before the effective date of any future inflation adjustment thereto made subsequent to [insert date of publication in the Federal Register] as provided in § 6.6 of this part.